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6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 OAKLAND DIVISION
10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 SHIV D. KUMAR,

15 Defendant.
16
17

Case No. 4:17-cr-00114-JST

**DECLARATION OF SANJAY BHANDARI
IN SUPPORT OF MOTION TO
CONTINUE SENTENCING, OR IN THE
ALTERNATIVE, FOR SPECIFIED
RELIEF**

JUDGE: Hon. Jon S. Tigar
CTRM: 3, 3rd Fl. (Oakland)
DATE: November 17, 2017
TIME: 9:30 a.m.

I, Sanjay Bhandari, hereby declare as follows:

1. I am an attorney at McNamara Smith LLP, and counsel of record for Defendant Shiv D. Kumar in this action. I am a member in good standing of the State Bar of California and the bar of this Court. I make this declaration of my own personal knowledge, except where expressly stated otherwise. For example, some facts are expressly offered as proffers of what I believe government counsel would not contest. If called as a witness, I could and would competently testify to the facts stated herein under oath. I attach true and correct copies of the following documents as exhibits:

| Ex. # | Description |
|-------|---|
| 1 | Certified Transcript of the March 24, 2017 Rule 11 Hearing (in Court file) |
| 2 | Certified Transcript of the October 6, 2017 Sentencing Hearing (in Court file) |
| 3 | Plea Agreement (in Court file) |
| 4 | August 10, 2016 Email from AUSA Olivera to Mr. Patton (produced by Mr. Patton to me) |
| 5 | August 15, 2016 Engagement Agreement and Conflict Waiver b/w Chris Cannon and Reena and Sandeep Kumar (produced by Mr. Cannon to me) |
| 6 | Excerpt of Government's Discovery (produced by Mr. Cannon to me) |
| 7 | Excerpt of Government's Discovery (produced by Mr. Cannon to me) |
| 8 | February 17, 2017 Email from Chris Cannon to Shiv Kumar (client copy, redacted to avoid waiver of matters not argued, matching in relevant content an incomplete copy produced by Mr. Cannon to me) |
| 9 | September 29, 2017 email from J. Olivera to C. Cannon (produced by Mr. Cannon to me) |

2. ***Mr. Kumar's Heart Condition.*** During the last hearing on October 6, 2017, the Court asked for medical information about Mr. Kumar's heart condition, in light of the medical emergency that halted the proceedings. Rather than seeking to authenticate and admit sufficient portions of the several hundred pages of sensitive medical records I have reviewed from Kaiser Permanente and Mercy Hospital in Sacramento, I hereby proffer the following summary of what

1 they would establish. *On August 23, 2017*, Mr. Kumar was driving with his son in Sacramento
2 when he suddenly experienced massive pain in his chest. He was taken to Mercy Hospital in an
3 ambulance. Mercy did an angiogram, found blockages, and did angioplasty resulting in
4 implantation of 2 stents. The angiogram showed blockages throughout the blood vessels of his
5 heart, one 99% stenosis/lesion, one 80%, six 70%, some 60%, 40%, 30% , etc. In September and
6 early October 2017 he visited with Kaiser doctors, complained of some discomfort, but had no
7 emergencies. *On October 6, 2017*, after the sentencing hearing was recessed, he was admitted to
8 a Kaiser hospital and kept overnight. The treating cardiologist recommending that Mr. Kumar
9 “probably should have bypass surgery,” or “a repeat cardiac catheterization with possible PCI
10 [i.e., angioplasty or stents].” Mr. Kumar asked for more time to discuss future arrangements
11 with his family. He was discharged with instructions to take 30 mg daily of Imdur, a drug that
12 relaxes and widens blood vessels to allow blood to flow more easily to the heart. He was also
13 told to take nitroglycerin when necessary, and continue existing heart medications such as beta-
14 blockers and ACE inhibitors. *On October 11, 2017*, Mr. Kumar was again rushed to the
15 emergency room, where he was found to have chest pains, shortness of breath and dizziness. He
16 underwent a catheterization, during which the cardiologist performed angioplasty and implanted
17 a stent in order to treat a 90% lesion in the proximal ramus intermedius, part of the left main
18 coronary artery. He has seen his cardiologist again since the operation, and was told he has heart
19 disease spread widely throughout his heart, including in many small blood vessels that cannot be
20 treated through angioplasty and/or stents. A bypass operation may end up being required if his
21 symptoms do not get better.

22 3. ***Conflicts History.*** I proffer the following facts not from my personal knowledge
23 but based on review of billing records and prior written contacts between the government and
24 prior defense counsel Mr. Patton and Mr. Cannon. I have spoken to AUSA Olivera about these
25 facts and I do not believe them to be contested. On August 8, 2016, government attorneys Jose
26 Olivera and Rebecca Sable met with Shiv Kumar’s attorney Roger Patton regarding a criminal
27 investigation that arose from a 2011 IRS audit of Kumar’s company A-Paratransit Inc. (API).
28 The government told Mr. Patton it was moving towards bringing charges against Shiv, and that

1 his daughter Reena, API, and others faced possible prosecution. The government indicated that
 2 if Shiv were to plead guilty, the government would likely not proceed to charge the others, and
 3 so it proposed a tolling agreement to allow Shiv to consider pleading guilty. *See* Ex. 4. Mr.
 4 Patton referred Shiv's daughter Reena and others to Chris Cannon, who prepared a written
 5 engagement agreement and conflict waivers dated August 15, 2016 for his representation of
 6 Reena Kumar, Sandeep Kumar, and API. Ex. 5. The State Bar website reflects that Mr. Patton is
 7 retired, and billing records show he stopped billing for this case in March 2017. At some point
 8 before he retired, billing records indicate Mr. Cannon began representing Shiv, and Court records
 9 reflect that he represented Shiv as sole counsel of record during sentencing. Mr. Cannon's files
 10 as produced to me contain his engagement agreement and waiver with Reena & Sandeep, but no
 11 engagement agreement or waiver with Shiv. Mr. Cannon's records reflect no termination of his
 12 representation of Reena, Sandeep, or API.

13 4. ***Mr. Kumar's English Language Ability.*** I have spoken with Mr. Kumar for many
 14 hours in person and over the telephone. I have medium proficiency in Mr. Kumar's native
 15 languages of Hindi and Punjabi so we can communicate, but in English, I have difficulty
 16 understanding Mr. Kumar, and he has difficulty understanding and explaining things to me. The
 17 difficulty is relatively small for simple matters, but for complex concepts, the difficulty is so
 18 high that I would not proceed without a Punjabi interpreter. I would never have Mr. Kumar sign
 19 a complex legal document unless I or someone else could explain it in Hindi or Punjabi to him.
 20 Because of my growing unease about Mr. Kumar's English ability, I first had him informally
 21 assessed by a court-certified interpreter, who shared my concerns. I then asked an established
 22 English teaching center to assess him using standardized testing materials.

23 I declare under penalty of perjury under the laws of the United States that the foregoing is
 24 true and correct. Executed November 15, 2017 in Germany.

25 By: /s/ Sanjay Bhandari
 26 Sanjay Bhandari
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